

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 929 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ISHMAILBHAI KALABHAI JAM

Versus

DIVISIONAL CONTROLLER

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Appearance:

MR PS CHARI for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, a driver in the Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") has challenged the judgment and award dated 23.12.1982 passed by the Labour Court, Rajkot in so far as, while directing the respondent Corporation to reinstate the petitioner in service as a driver, the Labour Court further stipulated that the petitioner is to

be reinstated as a fresh driver.

2. The petitioner joined as a driver in the services of the respondent Corporation in or about 1964. The petitioner was given chargesheet dated 17.12.1980 on the ground that the petitioner had remained absent from 11.9.1980 to 4.12.1980 without leave. The departmental inquiry was held against the petitioner and the penalty of dismissal was passed. The petitioner raised an industrial dispute and reference was made to the Labour Court. The Labour Court found no fault with the departmental inquiry but held that the penalty was grossly disproportionate to the misconduct proved and, therefore, under Section 11A of the Industrial Disputes Act, 1947, the Labour Court directed the respondent Corporation to reinstate the petitioner in service but as a fresh driver in the pay-scale of drivers with initial pay.

It is the aforesaid award which is under challenge in this petition.

3. At the hearing of the petition, the learned counsel for the petitioner submitted that having found that the penalty of dismissal was grossly disproportionate and the case warranted interference under Section 11A of the I.D. Act, the Labour Court ought not to have stipulated that the petitioner be employed as a fresh driver. The learned counsel pointed out that the consequence of the above stipulation is that the petition would lose the benefit of his 16 years service by putting him at the initial stage of the pay-scale of the driver. The learned counsel, therefore, submitted that the Labour Court ought to have given the petitioner the benefit of continuity of service and backwages. The learned counsel further made a grievance that inspite of the fact that the award of the Labour Court was passed on 23.12.1982, the Corporation reinstated the petitioner only as per order dated 8.2.1984. Therefore also, the petitioner was deprived of his legitimate wages for a period of more than one year.

4. On the other hand, Mr Raval, learned counsel for the respondent has opposed the petition and has contended that the petition suffers from delay, laches and acquiescence as the award passed in December, 1982 is challenged in this petition filed in January, 1986. It is further submitted that the Labour Court having exercised its discretion under Section 11A of the Industrial Disputes Act, this Court would not interfere with the award under Article 226 or 227 of the

Constitution especially when the workman did not file any reply to the chargesheet nor remained present at the inquiry.

5. Having heard the learned counsel for the parties, it appears to the Court that though prima facie there is some delay in filing the petition, it cannot be overlooked that the petitioner was without a job and that in spite of the award of the Labour Court passed in December, 1982, the Corporation took more than 13 months to reinstate the petitioner in service. In the facts and circumstances of the case the petition does not deserve to be dismissed on this technical ground though this fact would have to be taken into consideration while moulding the relief.

6. On merits, the misconduct of remaining absent without leave for more than two and half months was proved. The petitioner's defence, though not given in writing but also stated to have been given orally, was that the petitioner was sick during the relevant period and that thereafter at the time of inquiry the petitioner had to go to Kachchh to attend his ailing mother. Anyhow the petitioner did not remain present at the time of inquiry and, therefore, no fault can be found with the order of the Competent Authority holding the petitioner guilty of the misconduct in question.

7. The only question which arises for consideration in this petition is whether the Labour Court, while passing the award for reinstatement, was justified in stipulating that the petitioner shall be reinstated only as a fresh driver.

8. In the facts and circumstances of the case and looking to the nature of the misconduct, it appears that there was no ground for denying the petitioner continuity of service when the petitioner had already rendered 16 year service prior to the date of dismissal. Of course, some other penalty was required to be substituted for the penalty of dismissal. Therefore, in the facts and circumstances of the case, this Court would impose on the petitioner the penalty of withholding three increments with future effect. The petitioner shall obviously not be entitled to any backwages for the period from the date of the dismissal till the date of the award passed by the Labour Court i.e. till 23.12.1982. However, there is some substance in the grievance of the learned counsel for the petitioner that the petitioner was wrongly denied the opportunity to work and earn his salary from 24.12.1982 till the respondent sent the letter dated

8.2.1984. Accordingly the respondent shall pay the petitioner backwages for the period from 24.12.1982 till the date of the petitioner's reinstatement.

It is clarified that while working out the aforesaid benefits and refixing the petitioner's pay accordingly, the petitioner shall not be paid any monetary benefits for the period from the date of reinstatement till the date of filing of the petition i.e. 31.1.1986.

9. In the result, the petition is partly allowed. The award passed by the Labour Court for reinstating the petitioner is confirmed, but the stipulation for employing the petitioner as a fresh driver is substituted by the following order :-

- (i) The petitioner shall be granted continuity of service from the date of dismissal till the date of reinstatement for all purposes except as provided hereinafter.
- (ii) The petitioner shall be subjected to the penalty of withholding three increments with future effect after the date of dismissal.
- (iii) The petitioner shall be paid arrears of difference salary only from the date of award of the Labour Court (23.12.1982) till the date of reinstatement.
- (iv) Consequent upon refixation of the petitioner's pay as per the above direction, the petitioner shall not be paid any arrears of difference of salary and allowances from the date of reinstatement till the date of filing this petition (31-1-1986). The petitioner shall however be paid the arrears of difference of salary and allowances from 1.2.1986 onwards.

10. The aforesaid directions shall be complied with within a period of four months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

The petition is partly allowed in terms of the aforesaid directions.

sundar/-